

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550

74-1550

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-
CARMINE TRAMUNTI, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

253 DEFENDANTS-APPELLANTS' JOINT APPENDIX
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United States of America,

v.

73 Cr. 1099

Carmino Tramunti, et al.,

January 15, 1974
10:15 a.m.

(Hearing resumed.)

THE COURT: The record should reflect that some counsel have notified my chambers that they will not be present.

It seems that they feel the ball can be carried by the rest of you.

Mr. Lopez, I guess you will start.

MR. LOPEZ: Yes, your Honor.

THE COURT: Let me just suggest one thing. This courtroom is large, we set up the microphone system for that reason. If you will be good enough to use the microphone.

MR. LOPEZ: Mr. Siegal is present here today but he went downstairs because his client is there.

He did ask me to respectfully ask the Court if they could wait just a few moments until he returned here. He wanted to be present on the argument.

I am ready to proceed.

2 THE COURT: I think it is fair that we wait for
3 him.

4 MR. LOPEZ: Perhaps we should call downstairs
5 for him.

6 THE COURT: I will take care of it in the robin
7 room.

8 MR. SUNDEN: Are the plans merely to argue the
9 motion, and may I ask what else is planned for this morn-
10 in- because I might want to excuse myself if it is just
11 the legal argument.

12 THE COURT: The plans are merely to argue this
13 motion. I think I do have one other thing with one defen-
14 ant who was a fugitive but did show up yesterday.

15 Besides that, I don't believe there is anything
16 else scheduled.

17 I don't know how many people are going to argue
18 this motion.

19 MR. SUNDEN: Mr. Fisher is going to cover it.

20 THE COURT: All right.

21 Mr. Ellis, do you want to be excused also?

22 MR. ELLIS: No, your Honor, but while we are
23 waiting, I would like to call the Court's attention to
24 another article in this morning's Daily News.

25 THE COURT: I am going to have to start reading

the newspapers.

MR. ELLIS: This one is somewhat more factual than the previous article but does refer to the defendants other than Tramunti as minor mobsters.

I would ask the Court to take some measure to limit this adverse pretrial publicity.

THE COURT: Would you let me have the article?

MR. ELLIS: Yes, sir.

THE COURT: All right, gentlemen, we will wait now until Mr. Siegal comes up.

(In the robing room.)

(Present: Mr. Leighton, Mr. Phillips and
Defendant Robinson.)

THE COURT: Mr. Leighton, are you going to represent Mr. Robinson in this trial?

MR. LEIGHTON: If your Honor is going to assign me under the CJA I would accept the assignment.

I have spoken to Mr. Robinson several times and he tells me he is unable to afford counsel, he is unable to afford the fee I quoted to Mr. Robinson.

Mr. Robinson was originally recommended to me by an attorney in Washington, D. C. He came to my office some two or three-- well, I saw him in court for the first time when we had the dispute as to whether or not he was in court. I did not see Mr. Robinson thereafter until yesterday.

THE COURT: How many counts is Mr. Robinson named in?

MR. LEIGHTON: One count.

MR. PHILLIPS: He is only named in the conspiracy count?

MR. LEIGHTON: Yes.

MR. PHILLIPS: I think that is right.

THE COURT: Would you be ready to try the case?

md:mg 2

MR. LEIGHTON: I understand your Honor has made a ruling that all motions made will be considered on behalf of all defendants.

I did have in mind a motion for severance and I understand several lawyers have made motions to sever on similar grounds that I would request your Honor to so make.

I have also spoken to Mr. Robinson about being ready to try this case this week. I think if the government would answer certain questions that I have which I think the government has indicated when I spoke to Mr. Fortuin on two occasions, he would so indicate, I could be ready to proceed this week, with the consent, of course, of Mr. Robinson.

THE COURT: How about it, Mr. Robinson?

MR. ROBINSON: Yes, sir.

THE COURT: All right. You are assigned then under the CJA.

MR. LEIGHTON: Thank you.

THE COURT: Mr. Phillips, I assume that there will be requests for particulars. I think you know how I have ruled on the other ones.

MR. PHILLIPS: We will provide Mr. Leighton with a copy of the government's original bill of particulars,

1
2 supplemental bill of particulars, any post-arrest state-
3 ments of which we have copies and scientific reports which
4 consist of chemical analysis of the narcotics which we
5 intend to introduce.

6 I think that's about it.

7 THE COURT: Is he named in an overt act?

8 MR. LEIGHTON: Yes, he is, your Honor. I believe
9 No. 14.

10 THE COURT: Check now.

11 MR. PHILLIPS: We gave the particulars of overt
12 act 14, so the particulars would be contained in the govern-
13 ment's bill of particulars.

14 THE COURT: You gave it in connection with who?

15 MR. PHILLIPS: We gave it in connection with all
16 the other defendants, but Salley is the other defendant
17 named in that overt act.

18 THE COURT: I had a phone call yesterday and a
19 conversation today with a Magistrate in Washington, Jane
20 Dwyer, and she informed me that this defendant has been
21 reporting to her on an almost weekly basis as to his at-
22 tempts to get counsel and what he is supposed to be doing.

23 She didn't know what he was supposed to be doing
24 but she called me to tell me that he had been making these
25 reports and that I should take that into consideration.

1 I think I did take it into consideration yester-
2 day. I just wanted everybody to know about it.

3 I don't know who was looking for him, but they
4 couldn't be looking too hard.

5 MR. LEIGHTON: Is the trial going to begin some
6 time this week, Judge?

7 THE COURT: Hopefully, it will.

8 My problem is, as you know, up to this point
9 all counsel have joined in a motion to sequester the jury.

10 Are you going to join in that motion?

11 MR. LEIGHTON: Of course.

12 THE COURT: I will need a substantial number
13 of veniremen to pick a jury. It is on a day-to-day
14 basis as to whether I will have them.

15 MR. LEIGHTON: That motion has not been decided
16 yet, has it?

17 THE COURT: The motion has not been decided yet.
18 But it produces tremendous logistical problems. For ex-
19 ample, what am I going to do with the jury over the week-
20 end? The problems are enormous.

21 Unfortunately, when I took the oath I also agreed
22 to get stuck with such problems and try to resolve them.

23 All right, gentlemen.

24 (Recess.)
25

md:mg 5

(In open court.)

THE COURT: Mr. Ellis, I hope you don't mind if I mark your paper as Court Exhibit No.

MR. ELLIS: I do not, your Honor.

(Court Exhibit No. 2 marked.)

THE COURT: All right, Mr. Lopez.

MR. LOPEZ: As your Honor know, we concluded three days of an evidentiary hearing on the motion to suppress brought on by the co-defendant Di Napoli to preclude the government from using in evidence at this trial a suitcase and the contents of it containing approximately one million dollars.

It is quite apparent from the offer and the intention of the government during the course of this trial that they intend to offer this suitcase and this money and evidence relating to the seizure on the conspiracy count in the indictment.

This, of course, affects every single defendant that is named in that conspiracy count and of course will have a tremendous impact upon the jury from an evidentiary point of view and from a prejudicial point of view.

As a matter of fact, your Honor, it is our contention that so important is this decision that if this motion is denied it will of course mortally wound every

1 md:mg6

2 single defendant that is joined in that conspiracy count.

3 As a matter of fact, I think the impact of this
4 motion and this application may well settle the weeks
5 that are to follow as far as trial is concerned if a jury
6 is told that one million dollars unrelated to narcotics,
7 except that they are to speculate upon it, and we are not
8 even raising the issue of relevancy now, only the issue
9 of taint.

10 As a matter of fact, as I recall yestersay, it
11 was Mr. Curran himself who indicated that in the event the
12 motion was granted and the government precluded from using
13 evidence of the one million dollars during the course of
14 trial, they would seriously consider bringing the matter
15 to the Second Circuit.

16 We invite, your Honor, such a decision.

17 Of course, it is your Honor's prerogative to
18 make the initial determination, but if you grant the
19 motion, Mr. Curran's application has a great deal of merit.
20 It would settle one important issue in this trial, and I
21 think it is perhaps the most important issue on this trial,
22 because after this what we will be faced with, your Honor,
23 is essentially the testimony, of purchased testimony, of
24 informants that the government will produce.

25 The one million dollars that we have here, your

1
2 Honor, is essentially very tangible evidence going to the
3 wherewithal of these defendants joined in a conspiracy
4 to purchase large quantities of narcotics.

5 Your Honor, going to the essential points produced
6 at the evidentiary hearing the government is relying on
7 the lawfulness of the arrest of February 3, 1972 and the
8 probable cause to make the warrantless search.

9 They are trying to escape the mandate of the
10 Fourth Amendment in securing a warrant before any search
11 and seizure can be made and they are in effect claiming
12 from their brief that this falls, this seizure, falls
13 within one of the exceptions of the warrant requirement of
14 the Fourth Amendment.

15 We don't have a situation here to name some, of
16 an abandonment theory, of a street encounter theory, of
17 a plain-view theory of incident to a lawful arrest or
18 anything of the sort.

19 They are counting on probable cause to make
20 the search and to make the seizure.

21 If your Honor will permit I know the facts are
22 clear in your Honor's mind and certainly fresh. I would
23 like to allude to certain factors I think are of prime
24 importance.

25 One of them is to begin with on the night of

February 3, 1972, at around 9:30 p.m., when Di Napoli and Papa left 1908 Bronxdale; it was clear that there was no crime afoot at that time.

The agents were not out on an undercover sale. They were not out to detect a new narcotic transaction, they had no advance information that any narcotic transaction was to take place. As a matter of fact, your Honor, the testimony of all the law enforcement officers involved clearly indicates they were out to execute an arrest warrant on a person other than Di Napoli and Papa.

Spurdis and Reilly both testified, your Honor, as I recall, that they went to any number of places before they fell upon 1908 Bronxdale Avenue, and I will come to this address and discuss it from your point of view in a few moments.

But what is most important is that we do not have here the possibilities or any advance knowledge of a narcotic transaction on that day. There is no informant, there is no wiretap, and in mentioning an informant, I want to allude to the fact of Stanton Garland.

I think it was Agent Pallatroni who said some time in 1971 "we had an informant by the name of Stanton Garland and he told us that a fellow by the name of Rocky Evangelista and Danny Rinaldi were carrying on

1
2 narcotic transactions with Vincent Papa, and that he could
3 of course purchase a kilo from Vincent Papa through the
4 medium of these two gentlemen for an amount of \$25,000."

5 He alluded to a second fact brought out at the
6 evidentiary hearing and that was, your Honor, that he had
7 spoken with Vincent Papa some time before December 1971,
8 and the fact was that he felt that Vincent Papa was still
9 in the narcotic business and planned future transactions with
10 Vincent Papa.

11 It is our theory and our submission that this
12 information provided before December 1971, that Stanton
13 Garland provided is stale on the issue of what happened
14 on February 3, 1972, and I think that in our memorandum
15 of law we cited the Robinson case.

16 In any event, your Honor, even if you wish to
17 credit the testimony of Stanton Garland given to Pallatrone
18 one must consider the testimony also shared generally
19 by the Bureau of Narcotics at the time and the New York
20 Joint Task Force that Stanton Garland was an unreliable
21 informant who was dealing at the very time he was providing
22 information, who himself was in possession of a weapon
23 for which the Bureau of Narcotics never arrested him, and
24 they never referred the case for any action to the New York
25 State authorities.

That furthermore, your Honor, when it came to the point of actually testifying and providing this type of information that Stanton Garland had indicated to the government that he would, he absconded and has not been heard from since.

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Tran.

So now your Honor, as far as February 3, 1972 is concerned, I think it is clear that there is no crime afoot, and this is one important evidentiary factor, as we look at the totality of circumstances, as to what happened on that night, February 3, 1972.

Now, let's take a look at the suspicious address, which the government characterizes as a suspicious address, 1908 Bronxdale Avenue. What is the information that we have regarding 1908 Bronxdale Avenue? Well, essentially, primarily, it is this: that one person, who was arrested for the larceny of an automobile, a John De Benedetto, gave his address as 1908 Bronxdale Avenue. There was no scintilla of evidence that 1908 Bronxdale Avenue, your Honor, was ever used for narcotics transactions, was ever a place or a hangout for persons in the narcotics traffic, that violators, known violators of narcotics were using 1908 Bronxdale Avenue to carry on their violations of the narcotics laws of the United States.

It is our submission, your Honor, from the testimony even of Mr. Richman that 1908 was a residence where Mr. Di Napoli lived, that Mrs. Di Napoli lived there with the children and with the child.

So we have that fact.

1908, from the proof in this case, your Honor,

is not a suspicious address.

Now, your Honor, we come to a third factor. As we look at probable cause -- and this is the contention of the government -- we have to look at it as a question of levels arising to probable cause. We start out with facts and see how the levels take us to justify the warrant requirements of the Fourth Amendment.

We have two false assumptions -- honestly made-- by Pallatroni. Let us say they were honestly made.

One of these false assumptions is that the car that Vincent Papa was using on the night of February 3, 1972, your Honor, was in fact a rented or a leased car, and this is the typical MO of a narcotics transaction, of someone who wants to pull off a narcotics violation or a narcotics deal; he will not use a car registered to himself, but he will go out and rent a car, lease it so it can't be later identified or traced or related readily to himself.

Well, it is clear that Charles Papa, the owner of the Worldwide Leasing Corporation took the stand here and said, "Our firm does not lease cars. Our firm does not rent cars. What we in effect do, we are a Pontiac dealership. We in fact sold a car to Vincent Papa. As it happened that car was in service and under repair on February 3, 1972, so as a courtesy we gave him a dealer's car."

This car was eventually returned to Charles Papa and to the Pontiac dealership after he explained all the facts to Agent Rinaldi.

So this whole idea that Papa had another car that he could have been using but was using this car deliberately for a narcotics transaction is, unfortunately for Pallatroni, a false assumption.

The second false assumption is that the New York attorney by the name of Murray Richman tried to take the heat off the surveillance at 1908 Bronxdale Avenue, in that they indicated that a man went into a car registered to Murray Richman shortly before Papa and Di Napoli left 1908. They followed him. He made a circuitous return.

Now, Murray Richman gave testimony and gave the benefit of his testimony to the Court. He gave three specific reasons why he was there that night at 1908 Bronxdale Avenue, and the reasons, as your Honor will recall were, of course, course, to discuss a case with one of the Di Napoli brothers; second, to discuss a real estate purchase in Westchester by Mr. Joseph Di Napoli, and to bring a gift to Mrs. Di Napoli relating to the child that was recently born.

When he concluded his business, your Honor, he left, and when asked about the surveillance, I think he blurted out during the course of his testimony, "If I had

known there was any surveillance at 1908 Bronxdale Avenue,
I certainly wouldn't have been there."

So we have these two additional facts, on which
the government is attempting to rely on the issue of probable
cause. I think during the course of these proceedings, by
very direct testimony, we have been able to show their
independent worth.

Your Honor, it is a very curious factor indeed
that on February 3, 1972, when Papa and Di Napoli were both
arrested on the instant charge, a complaint was lodged
against them before the United States Magistrate in this
district. The government took no action. There was no pro-
secution as far as that complaint was concerned, your Honor.
As a matter of fact, the government dismissed it and de-
clined prosecution on the thing.

Papa, although named as a co-conspirator in
this case, is not even a defendant in this case, and I
think that kind of test the government must meet. They
failed to go forward with prosecution, despite the fact that
they now claim that on February 3, 1972, they had the
probable cause and the necessary information to make a
lawful arrest.

Your Honor, the decision to halt the Di Napoli
car came moments before the car was hit. Whether one chooses

1 to believe whether it was Spurdis who gave the command to
2 stop the car or whether one chooses to believe it was
3 Pallatroni that gave the order to halt the car, it was clear
4 that even before the car stopped the decision was made to
5 arrest the occupants.
6

7 We have no vehicle infraction here, like in
8 Robertson and Gustavsen. We have nothing of the sort.
9 There was no crime that was committed in the presence of
10 the officers. But the government, on its showing of
11 probable cause now, after having made its decision to stop
12 the car, adds two other factors to the case, and it says,
13 "After we made our decision to stop the car and search the
14 suitcase, two more things happened: one, Officer Reilly put
15 his hand out of the passenger's side of the unidentified and
16 unmarked police vehicle and ordered Papa to stop the car,
17 and there was a moment's hesitation, and then a few feet
18 later the car stopped."
19

20 This is number one.

21 First of all, Spurdis contradicts Reilly's testi-
22 mony. He says Reilly was driving the car. "I was the one
23 who asked the Papa-Di Napoli vehicle to stop. I was the
24 one that signalled it, and they stopped within a few feet
25 after I gave the command."

So we have here now, your Honor, the testimony

being contradicted by two officers who were there on the scene: Reilly and Spurdis.

But even if your Honor wishes to credit Reilly, we have to understand the circumstances of that night. To show the shield, Reilly had to lower his window. It was pouring rain that night. The Papa window was closed, and it was raining. The car was moving. No siren was sounded. There was no immediate indication that this car was going to be stopped, your Honor. As a matter of fact, there was a spontaneous and sudden move by the police vehicle, who came abreast of Papa and Di Napoli and ordered the car to stop. It stopped.

Now, a second thing happened here, and that is, as the automobile stopped, Vincent Papa got out of the car and walked towards the officers. This Pallatroni has indicated that while it was not a consciousness of guilt, because he wasn't walking away, your Honor, the inference is he wasn't walking away from the vehicle, it was a sharp move on the part of Vincent Papa going to the police to inquire what was happening, because he was actually attempting to divert attention from the vehicle itself.

Of course, the fact that Di Napoli remained in the car was unexplained by Pallatroni. Nor was that question asked, your Honor. But I think it is unfair to say that

1 everyone who is detained by non-uniformed police officers
2 in these types of conditions just sits in the car and waits.
3 We don't have any evidence here during the course of this
4 evidentiary hearing that Papa actually knew that these
5 people were police officers. They were in civilian clothes.
6 The circumstances of the night and the whole thing could
7 not bring forth the impact that these were in effect police
8 officers.
9

10 Secondly, we know another factor on February 3rd
11 and that is that when the police officers got out of the
12 car they got out with gun in hand -- gun in hand -- and
13 their entire purpose was, and the very first thing they
14 said to Papa was, "You are under arrest."

15 The next thing, they told Di Napoli, "Get out
16 of the car, or we'll kill you, and put your hands on the
17 dashboard."

18 The next thing, after Papa was fully secured,
19 after Di Napoli was secured, at that time Spurdis went into
20 the back of the car, your Honor, pulled out the suitcase,
21 put it on the street, opened up the suitcase and found
22 one million dollars' worth of money.

23 I would like to point out something else your
24 Honor, that there is no testimony here that the suitcase
25 that went into the apartment at 1908 Bronxdale is the same

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2 suitcase that came out. . The government is resting its case
3 on the following information as far as probable cause is
4 concerned, when you really get down to it.

5 Vincent Papa is a known narcotics offender, and
6 the fact that a suitcase went into 1908 Bronxdale, carried
7 by Joseph Di Napoli in the company of Vincent Papa and
8 coming out again, appearing heavier -- I think the govern-
9 ment showed through the testimony of Reilly that he was
10 carrying the suitcase with two hands and through the testi-
11 mony of Spurdis that he appeared hunched over -- under the
12 circumstances, they are relying on these two factors to
13 justify probable cause as far as this is concerned.

14 Now, we will remember that it was Pallatroni,
15 the government witness, who indicated, "I made the decision
16 to hit the vehicle, to stop the vehicle."

17 Remember, he was told, your Honor, at least
18 that's what he said, that it was Vincent Papa who was carry-
19 ing the valise and not Di Napoli. Your Honor will have to
20 judge whether in effect his decision would have been the
21 same had he been told that an unknown person -- because
22 Joseph Di Napoli was not engaged in narcotics traffic at the
23 time, according to any information they had on February 3rd;
24 he was not connected with the Facciano case or anything of
25 the sort -- as a matter of fact, Joseph Di Napoli's reputation

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2 was mostly as a shylock and possibly in the gambling busi-
3 ness.

4 This is the essential information as far as
5 Joseph Di Napoli is concerned.

6 Your Honor, I believe the case that, frankly
7 speaking, I couldn't find in the Second Circuit, says the
8 glassine envelope and the brown paper bag is the hallmark
9 of the narcotics trade. I have never heard any decision
10 as far as that is concerned with regard to a suitcase. A
11 suitcase is not the hallmark of the narcotics trade, so
12 that itself cannot add or elevate this case to the warrant
13 exception of the Fourth Amendment.

14 Then, of course, your Honor, I think it is clear
15 from the testimony of the arresting officers or the law
16 enforcement officers, Spurdis, Reilly, Reed and Pallatroni,
17 that they are in contradiction to each other. These were
18 government officers and law enforcement officers of the
19 New York Joint Task Force. Two officers testified. Spurdis
20 testified that he did not know why he was arresting Papa
21 and Di Napoli. He was taking a shot. He wanted to know
22 what was in the suitcase. He was curious.

23 Reed, who was in the company of Pallatroni,
24 said that when he arrested Papa and when he arrested
25 Di Napoli, he could assign a reason to it. Reilly, a New

York Joint Task Force officer, said, "Well, it was for conspiracy to violate the narcotics laws of the United States."

When we really get down to the meat of the thing, we have this type of a situation:

A person who is known to the Federal Bureau of Narcotics -- and I will give him the best of it -- is known to the Federal Bureau of Narcotics, Vincent Papa as a possible narcotics violator, is in the presence of an unknown person going into 1908 Bronxdale Avenue. They walk in with a suitcase, and they walk out with another suitcase, or the same suitcase, appearing heavier. This is their whole basis for probable cause.

Your Honor, again, in the course of my brief with supporting cases, I am certainly not going to to into it. I did not include a case which was provided to me by Nancy Rosner, and that is United States against Gonzalez, 362 Fed. Supp. 415, 1973.

THE COURT: I found that one on Thursday.

MR. LOPEZ: You are acquainted with that case, your Honor? Then I am not going to belabor it, your Honor.

I know co-counsel, your Honor, have a number of points that they would like to make. I am familiar with some of those points. I am not going to belabor them. I am going to give them an opportunity to speak.

1
2 I think your Honor yesterday said he was going
3 to exercise his discretion in their favor to allow argument
4 on this suppression bid. Our main contention essentially,
5 your Honor, is that there is no probable cause to stop that
6 car, and our main contention here is also, your Honor, that
7 if there is any doubt -- there is no doubt in our minds --
8 but if there is any doubt in your Honor's mind, resolve it
9 in behalf of Di Napoli.

#3 10 Let them take it up to the Second Circuit. We
11 are ready to go up there with dispatch and speed to resolve
12 this issue which will have such a tremendous impact as far
13 as this trial is concerned. As a matter of fact, taking it
14 up will initially clear the air as far as this case is con-
15 cerned. It will permit other things to be done: the
16 transcripts on the eavesdropping tapes.

17 Of course, this should not have an influence on
18 your Honor's decision. We don't mean it that way. But I
19 think it would clear the air, since the impact of this
20 \$1,000,000 will have such an effect on the trial that is to
21 follow, in which we are going to have, the way things are
22 going, at least eight weeks of trial.

23 Thank you very much, Judge Duffy.

24 THE COURT: Thank you very much, Mr. Lopez.

25 MR. SIEGAL: May I say a few words, if your Honor

1
2 pleases?

3 THE COURT: Mr. Siegal, with concern for your
4 co-counsel, will you please go to the microphone?
5 Unfortunately, this room is quite large, and the acoustics
6 are not the best.

7 MR. SIEGAL: May it please the Court, first of
8 all, I want to join in the motion to suppress on behalf of
9 Mr. Tramunti. Of course, technically it may be said that
10 we haven't standing, but I believe we have standing, because
11 if this exhibit of \$1,000,000 goes into this record, we are
12 going to be stuck with it, and I submit most respectfully
13 that the prejudice against Mr. Tramunti is going to be out-
14 rageous, for the reason that the bill of particulars
15 alleges that Mr. Tramunti joined this conspiracy in May of
16 1973, a year subsequent to the event we are talking about.

17 Of course, you have a technical principle that
18 once you join a conspiracy you are bound by everything that
19 has gone before. But in this particular case we are charged,
20 as I read the overt act, with loaning some money or being
21 about to loan some money, whereas we have a situation that
22 \$1,000,000 was found in a suitcase a year before we ever
23 allegedly joined this conspiracy, and I submit it is not
24 harmless error as far as we are concerned to admit this evi-
25 dence but that a serious prejudice is created against

1
2 Mr. Tramunti, and for that reason I most respectfully move
3 on behalf of Mr. Tramunti that this evidence should be sup
4 pressed.

5 Thank you.

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7 (Continued on page 513.)
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THE COURT: Next.

MR. FISHER: If your Honor please, of course the defendant Christiano submits that he has standing beyond the mere fact of the conspiracy count charged in count 1 of the indictment. But whether or not he has standing we would submit that if your Honor will allow the evidence into this case, and if it were later determined to be error to have done so on the basis of the Fourth Amendment, and if that error prejudices another defendant in the case, whether or not that defendant had standing he would be entitled to relief, he would be entitled to a new trial.

Beyond that, if your Honor please, and addressing myself, if I may, to the merits of the motion, Mr. Lopez has argued there was no probable cause to effect the arrests.

I would argue as follows:

Assuming, arguendo, there was probable cause to effect the arrests, nevertheless there was no probable cause to effect the search. And assuming, arguendo, there was probable cause to effect the search, nevertheless there was no justifiable reason to open the suitcase.

Addressing myself to the first aspect, whether or not there was probable cause to search, clearly, your

1 Honor, I submit, and I will not belabor the point -- at
2 least the factual recitation which I thought was excellent
3 on the part of Mr. Lopez -- there is nothing anywhere in
4 the hearing to suggest there was contraband in the suitcase
5 or in the car.
6

7 Now, the high water mark of latitude with regard
8 to the governmental invasion of privacy with respect to auto-
9 mobiles must be *Chambers v. Maroney*, and even in that case,
10 if your Honor please, even there probable cause must ex-
11 ist for a search to be conducted of a car.

12 The suitcase was taken from the car. That act
13 alone constitutes a search of the car without a warrant and,
14 I submit, without probable cause.

15 I think it is interesting to note that two
16 of the agents here were unable even to articulate a reason
17 for their arrests and for the searches.

18 Secondly, if your Honor please, assuming, *arguendo*,
19 there was probable cause for the arrest, and assuming,
20 *arguendo*, that there was probable cause for the search, both
21 of these things we strenuously contest, of course, I submit
22 under the authority of *U. S. v. Soriano* that still there
23 was no reason in the world to open the suitcase, no reason
24 under the Fourth Amendment.
25

With respect to *Soriano* I am referring to the

panel decision. That case is now before the Fifth Circuit again en banc.

In that case there was surveillance leading officers to follow certain people in a taxicab to the airport. An arrest was made at the airport and the suitcases were seized from the trunk of the taxicab.

In the panel opinion it was held error -- I'm sorry, it was held a violation of the Fourth Amendment -- to open the suitcases.

I think what the Fifth Circuit was getting at was some of the language in *Coolidge v. New Hampshire*, and the regeneration, if you will, of the *Trubiano* case in the Supreme Court.

There was no reason to open the suitcase without a warrant. There were no exigent circumstances, they had the defendants in this case well-ensconced, they had the suitcase in their possession. They could have taken all three of the things, the two people and the suitcase back to the station, and they could have obtained a warrant. There was no reason in the world for them not to.

The government might argue there was already a very serious invasion of privacy, it matters little the opening of the suitcase.

I think that is a specious argument if in fact

Mr. Phillips planned to advance it.

It is one thing-- for instance, someone can look at my house, but opening it, going into it, is a far greater invasion of my privacy than merely looking at it. They can put a surveillance on it, they can even "secure" the house, but going into it reveals its contents to the obtrusive eye of the government.

I submit, your Honor, there is no reason in the world to do it in this case. There was more than ample time and there were no exigent circumstances to account for the government's failure to obtain a warrant.

THE COURT: Thank you.

Next, Mr. Rosenberg.

MR. ROSENBERG: If your Honor please, as I understand the facts of the case, when a determination was made to hit the car the evidence that they are relying upon is two-fold; Vincent Papa, a known narcotic trafficker and someone was carrying a suitcase which appeared to be heavy.

There were certain circumstances that they alluded to subsequent to their stopping the car, but that in the main was what essentially they are relying on, Vincent Papa and the fact a suitcase appeared to be heavier.

I am curious as to whether or not based upon that

1 set of circumstances they could have gone to a magistrate
2 and asked for a search warrant, based upon that, and how
3 a magistrate would have reacted to that set of circumstances.

4
5 It would appear that if this Court were to deny
6 our motion to suppress then all anybody in the presence of
7 Vincent Papa, any place, any time, under any circumstances--
8 and this of course can be projected to anybody else that
9 they say is a known narcotic trafficker-- can be stopped,
10 searched and frisked at any time.

11 I don't think this is within the purview of the
12 Fourth Amendment.

13 THE COURT: Thank you, Mr. Rosenberg.

14 Next.

15 MR. ELLIS: I join in what's been said, and have
16 nothing to add.

17 THE COURT: I assume everybody joins in what's
18 been said.

19 Does anybody else want to argue orally?

20 Mr. Stotsenburg I guess is next in line.

21 MR. STOTSENBURG: I don't want to belabor the
22 points made. However, it seems to me, and without waiting
23 that position, that inevitably if your Honor should deny
24 this motion at this time in fact you are looking at the
25 airing of the issue as it bears on relevance.

1
2 My client to the extent that any information
3 has been provided by the U. S. Attorney, and there is one
4 fact that has been provided and is in the bill of particu-
5 lars to Indictment No. 1099, Paragraph 5 -- my client is
6 alleged to have joined the conspiracy in the spring of 1973

7 This seizure occurred in February 1972, and re-
8 lated to activities in 1971.

9 I understand that in a conspiracy the various
10 acts of the conspirators are subject to connection, but
11 it seems to me that one of the most obvious points that a
12 layman could see is that if money is brought into a con-
13 spiracy it is to be used for the purposes of that con-
14 spiracy.

15 As I understand it, the government is still in
16 possession of the million dollars, and consequently the
17 prejudicial effect -- that is to say, the influence on the
18 jury -- becomes manifest.

19 It is clear what is going to be done by the
20 prosecution is to use it to bolster places where they may
21 not have testimony.

22 Consequently, I draw your Honor's attention to
23 what has been called the "prosecutor's darling," and that
24 is conspiracy. I am sure your Honor is aware of that.

25 The only fair way that defendants can ever get

1
2 a trial, and it is particularly within the discretion of
3 the trial judge, is when things that are so far pitched
4 and particularly prejudicial are just not allowed to come
5 in, and the issue here is one of time-- that is to say
6 a year later my client is alleged to have joined the con-
7 spiracy, and an amount of money, and its obvious prejudi-
8 cial effect and the lack of relevance or materiality.

9 Thank you, your Honor.

10 THE COURT: Mr. Stotsenburg, I think everyone
11 would want to recognize one thing. The only ruling on
12 which I will make a decision is a ruling on suppression,
13 not on the question of relevance.

14 MR. STOTSENBURG: Your Honor, I understood
15 that, but I just --

16 THE COURT: I understand that your argument
17 basically is that you would be prejudiced because you be-
18 lieve it to be irrelevant.

19 MR. STOTSENBURG: That is the second argument
20 without repeating the first one, yes.

21 THE COURT: All right.

22 Mr. King.

23 MR. KING: May I be heard?

24 THE COURT: Yes.

25 MR. KING: If your Honor please, I just want

1
2 to address myself to one of the facets of the argument
3 made by Mr. Lopez, and that is as to impact that the
4 introduction of this money would have on a jury.

5 I respectfully call your Honor's attention to
6 the fact that the overt act with which my client, John
7 Gamba, is charged, No.1, is that the heroin he received
8 was in the early evening hours of January 1972, which would
9 be within a month of this seizure of the money.

10 I think that at least as far as my client is
11 concerned; he would certainly be besmirched by reason of
12 the proximity of time between the act with which he is
13 charged and the seizure of the money, and for that reason I
14 join Mr. Lopez in his motion.

15 Thank you.

16 MR. RICHMAN: The difference in this particular
17 case that I would differentiate my situation from Mr.
18 Tramunti's situation in behalf of Benjamin Tolopka is it
19 is alleged his participation in this conspiracy took place
20 in August of 1970, and at that point thereafter there
21 seems to be no evidence or no indication that he continued
22 as part of this conspiracy; to introduce this evidence as
23 against him, even on a broad basis, would be to preclude
24 any possibility of a fair trial to occur for Mr. Tolopka
25 in this particular instance, and this is the only point I

would make to differentiate from anything else that was said before.

Thank you, your Honor.

THE COURT: Thank you, Mr. Richman.

Is there anyone else on the defense side who wants to be heard?

(No response.)

THE COURT: Mr. Phillips.

MR. PHILLIPS: Your Honor, before I address myself to this issue, I would just like to take up one thing that Mr. Siegal mentioned.

He stated in the government's bill of particulars the government stated that Mr. Tramunti entered the conspiracy some time around May of 1973.

I don't have the government's bill of particulars before me but if that is--

MR. SIEGAL: I think I was wrong. January of 1973.

MR. PHILLIPS: I just wanted to make sure that Mr. Siegal would not be surprised by some of the government's evidence that was to be produced at trial.

All counsel have indicated the prejudice of this testimony or evidence to their clients. It is the government's position that this evidence would be prejudicial

1 because it is probative, probative of the conspiracy as it
2 existed and as it is charged in the indictment and of the
3 individual roles particularly of Mr. Di Napoli in the
4 conspiracy.
5

6 With respect to the issue at hand before your
7 Honor, based on the testimony that was adduced at the sup-
8 pression hearing last week, I would like to dispose of two
9 matters very quickly.

10 First of all, the credibility of the witnesses
11 and what your Honor should conclude to be the truth as
12 to what occurred on the evening of February 3, 1972.

13 The main defense witness that contradicted the
14 government witnesses in this case, Detective John Spurdis,
15 we submit is not worthy of belief at all by this Court.

16 He was contradicted not only by three government
17 witnesses, Pallatroni, Reed and Reilly, but he was contra-
18 dicted by himself both as to his testimony on prior oc-
19 casions before Inspector Comperiati and by his own testi-
20 mony between what he said on direct examination and by what
21 he said on cross-examination.

22 With respect to Inspector Comperiati, he unequivocally
23 stated on the witness stand on cross-examination that he
24 did not tell him he believed he had probable cause to
25 order that the car be pulled over, whereas he equally

unequivocally said to Comperiatì he did believe he had probable cause.

He said on direct examination that when he met Mr. Di Napoli for the first time after this arrest the charges were not outstanding, whereas on cross-examination he admitted that the charges still were outstanding.

He contradicted, or I should say the three government witnesses contradicted in many instances what Detective Spurdìs had to say, specifically who ordered the car to be stopped, Pallatroni or Spurdìs, who told Papa to pull over, whether it was Officer Reilly or Detective Spurdìs, and in many other instances. I won't go into others.

Also, it is obvious from Detective Spurdìs' close association after the arrest with Mr. Di Napoli and his antagonism toward Pallatroni as to why he gave such inherently incredible testimony that he gave on the witness stand last week.

I would point out the government does not take the same position with other defense witnesses, Mr. Richman and Mr. Papa, but we contend that their testimony as it was given does not in any way affect the probable cause that Pallatroni had to order the car to be pulled over and Papa and Di Napoli placed under arrest and the suitcase

searched.

The second matter I would like to dispose of quickly is the legal question as to whether or not there was a necessity for the agents to apply to a magistrate for a search warrant after they had pulled the car over.

I think the law is crystal clear on this now from the case of U. S. v. Carroll in 1962 right down to Chambers v. Maroney, that automobile searches do not require the search warrants simply because an automobile is a method that can very easily dispose of evidence, that can leave the scene of a crime -- leave the scene, and that unlike a house, a room, the agents are not required to obtain a search warrant before they search an automobile.

The legal question, I submit, that your Honor is confronted with here is solely whether or not the agents had probable cause to pull the car over and to search the suitcase.

The basic standard here set forth in U. S. v. Brinniger is whether a reasonably prudent man had a belief that a crime at that time was being committed.

We submit that Agent Pallatroni was a reasonably prudent man, and that he did have a belief and a reasonable belief that a crime was being committed at this time, specifically a violation of Federal Narcotics Laws, in that

the suitcase contained heroin or narcotics.

What was known to Peter Pallatroni on that evening, and what was observed by him and more specifically by Officer Reilly, was as follows:

First of all, there was some background information that an investigation had taken place in the fall of 1971, specifically in the Cottage Inn, in December Detective Spurdis had overheard a conversation between a Frank Facchiano and another individual wherein Facchiano said the other individual needed another eighth.

On the very same evening Facchiano was observed passing a package to another person named Curci. Curci was later arrested that same evening in possession of an eighth of a kilo of heroin.

The description given by Detective Spurdis almost precisely meets the description of Joseph Di Napoli. That is the description of the individual that Facchiano was overheard by Detective Spurdis saying-- to whom Facchiano said "I need another eighth."

Secondly, Officer Reilly observed Vincent Papa and another individual arrive in the vicinity of 1908 Bronxdale Avenue. The other individual got out of the automobile with the suitcase. Vincent Papa was known not only to Pallatroni but to Spurdis and Reilly as a known

1 narcotics trafficker of the highest level.

2 Papa stared at the agent for several seconds
3 after he parked the car and got out of the car and then
4 entered the house at 1908 Bronxdale Avenue.
5

6 Pallatroni knew that Papa owned or had informa-
7 tion that Papa owned two automobiles, yet he drove up in
8 an automobile which Pallatroni checked out the license
9 plate of and it turned out, according to what Pallatroni
10 said, to come back to a leased- a company that leased
11 cars.
12

13 It is true that that company, the government does
14 not contest that that company in fact does not lease cars
15 but is rather a company that sells cars.

16 However, what Pallatroni at the instant got over
17 the car radio was something that he called the Wide World
18 Sales Corporation or Leasing Corporation. As it turned out
19 it is the Wild's Sales Corporation.

20 I don't think it is altogether unreasonable for
21 Pallatroni to conclude, based on what came back, that
22 this was a leased automobile.

23 Pallatroni observed an individual leave 15
24 minutes before Papa and Di Napoli left, get into an auto-
25 mobile and leave the area. Pallatroni then left and
followed the car, not knowing to whom the car was registered

2 and not knowing who was driving the car.

3 As it turned out, of course, it was Murray
4 Richman and it turns out it was registered to Mr. Richman,
5 but that was unknown at that time to Agent Pallatroni.

6 The fact of the matter is that Pallatroni followed
7 him and it appeared, according to the testimony of both
8 Agent Reed and Agent Pallatroni, that the individual was
9 driving in a circle in an attempt to take off the surveil-
10 lance.

11 Even Agent Reed, much less experienced than Agent
12 Pallatroni, testified that it was his conclusion that this
13 was precisely what was being done.

14 Reilly and Spurdis also observed other individuals
15 coming and going. Three women left and came back.
16 One man left, and then just five minutes before Papa and
17 Di Napoli left with the suitcase, two men left and again
18 this is a one-family dwelling, according to the testimony
19 that was adduced at the hearing.

20 Two men left and got into separate cars and
21 drove away.

22 Five minutes later the suitcase came out of the
23 house, and it was obvious to Officer Reilly that it was
24 heavy, heavier than when it went in, the way it was being
25 carried with two hands in front of the person who was

1
2 carrying it, indicated to Agent Reilly that it was heavier
3 than when it went in and he testified that it was to him
4 the same suitcase that had been carried in. It was being
5 carried out by the same two individuals who carried it in,
6 by an individual who had the same description as that
7 individual that Facchiano had requested another eighth of
8 heroin just five months before.

9
10 Finally, the last item is Agent Reilly had some
11 difficulty pulling the car over and after Papa finally
12 pulled it over, he got out of the automobile and instead
13 of waiting there for the police officers to come, walked
14 towards Agent Pallatroni - excuse me, walked to the auto-
15 mobile that Reilly and Spurdis were in.

16
17 By this, Agent Pallatroni thought he was trying
18 to get away from the automobile, that there was something
19 in there that Agent Pallatroni believed Papa to be -- to
20 not want the agents to know what was in there.

21
22 I think that the testimony of either Reilly or
23 Spurdis is even corroborated exactly what Pallatroni be-
24 lieved with respect to this.

25
Mr. Lopez cites the case of U. S. v. Gonzales.
The opinion by Judge Bauman, in support of his position,
that Pallatroni and the other officers did not have probable
cause to pull Papa's car over and to search the suitcase.

We submit Gonzales can be distinguished on its facts as follows:

In Gonzales the agents had had good information that Gonzales himself was involved in narcotics; and undercover agent in fact who had known Gonzales when he was young talked to Gonzales in a bar in the Lower East Side, and Gonzales had admitted to him that he was involved in narcotics and making good money.

However, that was in December of 1971.

A couple of weeks later-- also the agents could put by surveillance Gonzales with a man named Arroyo. Two weeks later in early January 1972 Arroyo was arrested in connection with the seizure of over 200 pounds of heroin in Miami, Florida.

Arroyo, and later there was another seizure involved about a day or two later. Gonzales had had nothing to do with those seizures.

But the issue before the court was not the arrest of Gonzales, or the arrest of Arroyo, the issue was whether the arrest of a man named Torres was lawful, and in that connection the agents never even saw Torres until January 18, 1972, and while they saw Torres in the company of Gonzales, they saw nothing suspicious whatsoever on that day and Judge Bauman rejected, and I think rightly

so, the government's contention that it was suspicious that Gonzales and Torres had peeled out in an automobile after getting into it in front of some building or some store or some delicatessen.

Other than that, there was nothing suspicious that the agents observed on the part of Gonzales or Torres on January 18.

The following day, which was the day of Torres' arrest, there was again absolutely nothing suspicious about the activity of Gonzales and Torres. All they observed was Gonzales alone go into a couple of buildings in the Lower East Side and then they observed Torres and Gonzales together, they observed Gonzales drive Torres to a motel and they observed Torres get out of the car, and walk into the motel, and was placed under arrest and in possession of \$100,000 in a paper bag or in a satchel of some kind.

Judge Bauman said that you simply cannot impute to Torres the reputation of Gonzales and the prior information you had regarding Gonzales.

Just as Mr. Lopez had an ace in the hole in the form of Gonzales, the government also has a case which we did not include in our brief which we submit supports the government's position in this case, and that is U. S. v. Christopher in 470 F. 2d, page 865, a case tried before

Judge Gagliardi and affirmed by the Second Circuit in 1972.

I am certain that cert. has been denied in that case.

Essentially, I would like to summarize briefly the facts and the information that the agents had prior to and including making the arrest in that case and the seizure.

The agency received a tip from a "close friend" that a man named Pierro and a fugitive named Patsy Malizia were partners in the narcotics business, and that by watching Pierro, they could find Malizia.

Malizia at that time, there was a warrant outstanding for.

This information was not checked out and was not corroborated in any way. So what the agents did, they went to New Jersey to Pierro's home and they conducted a surveillance outside of his home. They observed one evening Frank DeSimone leave the house with Pierro and drive off and Pierro then returned.

15 minutes later a Cadillac arrived. When the Cadillac arrived it stopped and they could observe from the second floor somebody waving out the window, making a signal of some type or just generally waving.

The Cadillac parked and bundles were carried in from the trunk of the car into the house. The driver of

md:mg 20

the car matched the description of Patsy Malizio. Th
nothing happened for half an hour when Pierro came out
the house carrying a blue valise, looked up and down th
street, and put the valise into the trunk.

He then returned to the house.

There was nothing suspicious about the valise
The valise was not seen being carried into the house.
was bundles that were seen being carried into the house

The car was then driven to a diner and in a pa
ing lot at that diner the agents observed that Frank De
Simone, whome he had seen leaving Pierro's house earlier
that evening, and a man named Panica there. A convers
ensued and Panica got into the Cadillac and they drove
off.

The agents followed the car and they did not k
who was driving the car but they knew-- but they had rec
nized Panica as having previously been convicted of a na
cotics violation.

They believed that the person driving the car
the description of this fugitive Malizia, so they follow
the car and I think, that is, they were crossing the Geor
Washington Bridge or thereabouts, they told them to pull
over and then a chase ensued that took them all over
Manhattan at high speeds and finally they caught up to t

car and pulled it over.

The sum total of the probable cause there was the tip, the general information that was given, the prior conviction of Panica, and I believe they had information that Pierro had also been convicted on a prior occasion of a narcotics violation, the comings and goings, the arrival of the Cadillac and the waving from the second floor window, the looking up and down the street, the conversation at the diner, and the chase.

We submit that there was really nothing, or very little up until the time the chase took place.

Here in this case the government submits that there was much more in the way of probable cause.

The information that they had received, Agent Pallatroni had received, regarding Papa was substantially more than the information that had been received regarding Pierro and Malizio.

Pallitroni had information that Papa's criminal record going back to 1938 included a major narcotics conviction in the 1950s involving either five kilos or five pounds of heroin. They had present information, current information, received in December of 1971 from Garland that Papa was at that time heavily engaged in narcots trafficking, he had people underneath him that were involved in selling

multi-kilogram quantities of heroin at \$25,000 per kilo.

They checked the information out, Pallatroni did, to find out whether Garland could be believed. They found that he had identified out of 16 photographs two photographs correctly of Evangelista and two photographs correctly of Ranieri.

Pallatroni found out Evangelista was currently under investigation by his agency. He found out Papa was currently under a sealed indictment with 20 other individuals in a narcotics conspiracy case in the Eastern District of New York. And the telephone number of Evangelista given by Garland turned out to be the right one.

So the information they had in this case was better than what they had in the Christopher case.

The furtive movements observed at the scene in Christopher, the furtive movements consisted of nothing more than a wave from a second story window which could have been interpreted either way as being a wave of somebody who recognized the person coming up, or could be interpreted as a wave that everything is clear.

The other furtive movement involved in that case involved simply looking up and down the street before putting the blue valise into the Cadillac.

In this case you have Papa getting out of the

1
2 automobile and staring several seconds at the agents be-
3 fore going into the house.

4 We submit that perhaps the weight to be given to
5 the furtive movements in each case are probably equal.

6 However, in this case the suitcase was observed
7 by Officer Reilly as being obviously heavier coming out
8 of the house than it was when it was being taken in; it
9 was also being observed being carried by someone, according
10 to Officer Reilly, who was with a major narcotics traf-
11 ficker.

Now, of course, I believe the testimony record reflects that Pallatroni received the information that Papa was the one who had the suitcase. I don't think it really makes any difference. In effect, Papa was at least in constructive possession of it.

The comings and goings with respect to the house were probably equal in each case but perhaps moreso here, because in this case you had more people coming and going from the house, a single-family dwelling, and you had two individuals leaving just before Papa and Di Napoli left the house, and got in separate automobiles.

But more than that, in this case you have an automobile leaving just 15 minutes before Papa and Di Napoli and being followed by an experienced narcotics agent, someone who has made over a hundred arrests and conducted over two hundred surveillances of major narcotics traffickers and who, because of his experience concluded that this car was leaving the house and trying to take the heat away by taking whatever surveillance agents were there away from the area.

We submit that Agent Pallatroni's testimony in this regard should be given substantial weight, just as his testimony regarding the leased car should be. He had information that Papa owned two automobiles. Yet, when he

traced the license plates back on the automobile that Papa was observed bringing to this 1908 Bronxdale Avenue, he found that it was a leased car, and he knew that Papa lived in Queens, and here he was, owning two automobiles and driving a leased car from Queens to the Bronx.

Obviously, the failure of Papa to pull the automobile over in this case was not the same as the chase involved in the Christhoff, but we submit that the purpose in pulling the automobile over in Christhoff was not to search the car as much as it was as to ascertain whether the driver was the Patsy Malitzia that he thought he was, a fugitive, for whom a bench warrant had been issued.

Indeed, there is one thing that is common to both cases, and that is that in each case the agents were in some respect mistaken as to something. They believed in Christhoff that the driver was Patsy Malitzia. In this case, Pallatroni believed the car was a leased car. It turned out it was not a leased car. And Pallatroni also testified that he believed that the purpose of the person leaving earlier was to take the heat away, and the government does not contend that that was the purpose of Murray Richman driving away from 1908 Bronxdale Avenue.

However, that is not the standard that the Court should apply. The standard is subjective, and the standard

1 is what the agent actually believed and whether his belief
2 was reasonable under the circumstances. We submit that
3 Agent Pallatroni's beliefs were reasonable under the circum-
4 stances, in light of his experience as a narcotics agent,
5 his long experience as a narcotics agent.
6

7 We submit that everything that was observed by
8 the agents at 1903 Bronxdale Avenue, that everything that
9 Pallatroni knew about Papa's background and everything that
10 Pallatroni did, including the checking out of the license
11 plate of the car, while maybe not one of these and not even
12 two of these would constitute probable cause to pull the car
13 over and arrest the individuals in it and to search the
14 suitcase; however, all of them together are sufficient to
15 constitute probable cause, and, as we cite in our memorandum
16 Justice Burger has said it is the total circumstances, every
17 thing taken together, that would constitute probable cause.
18

19 We submit that there is more probable cause
20 existing in this case than there was in Christhoff, and we
21 submit that what the agents did in this case was entirely
22 reasonable.
23

24 The Fourth Amendment is not geared to excluding
25 or rejecting all searches but only those searches which are
deemed to be unreasonable. In this case, what the agents
did, what Pallatroni did, in the light of his experience,

was entirely reasonable.

MR. LOPEZ: Your Honor, may I just have two more minutes to reply? I will not belabor it too much.

THE COURT: Very well, Mr. Lopez.

MR. LOPEZ: Your Honor, in the arrest of Malitzia, it is quite apparent that the agents at that time wished to stop the car to make an inquiry of whether Malitzia was the person for whom they had a search warrant. It is obvious that in our case the purpose was ---

THE COURT: You mean an arrest warrant.

MR. LOPEZ: Pardon me?

THE COURT: You mean an arrest warrant.

MR. LOPEZ: An arrest warrant, yes, your Honor. And it is obvious in our case that the purpose of stopping the Papa car was to search. This was made obvious by the testimony of the two agents.

So there is quite a difference, and I think on that difference alone we can distinguish the purposes.

When they attempted to stop the Malitzia car, your Honor, a wild chase began.

Secondly, we have, as far as Pallatroni is concerned, we know that he made three observations here which are very questionable. We know that dealers' plates are not the rented plates of an automobile or the leased plates of

1
2 an automobile. We further know that he, as a matter of fact
3 because of that experience, your Honor, jumped the gun and
4 interpreted two innocent acts that were involved in this
5 transaction and attempted to elevate them to probable cause

6 In talking about the credibility of the
7 witnesses, it is very interesting to note, your Honor, that
8 Pallatroni indicated that he put the suitcase with the
9 \$1,000,000 in the trunk of the car and that the government's
10 own witnesses indicated that he put it in the back of the
11 car, just the way Spurdis said, and that during the course
12 of that night, raining as it was, he invited Papa out of the
13 car, and the only other agent in the car, and he alone was
14 left, as far as that suitcase was concerned, when he claims
15 he put it in the trunk of the car, within the car.

16 So when we are talking about credibility and
17 consideration, I think we have to consider everything.

18 Thank you very much, your Honor. I think I have
19 said everything I wanted to say.

20 MR. STOTSENBERG: I would like to add one more
21 fact, your Honor.

22 THE COURT: At the microphone, please.

23 MR. STOTSENBERG: It is just one sentence, if I
24 can say it loudly.

25 I think money is not anything like heroin or

1 even paraphernalia. Money is something which is not in and
2 of itself contraband. The last I heard, it's the best thing
3 to have around, and I think only because of the fact that
4 there is a large amount does Mr. Phillips find himself
5 ineluctably and irresistably drawn to make this ridiculous
6 argument.
7

8 I am speaking not of Mr. Phillips personally.
9 I have the highest regard for him. But the argument is just
10 ridiculous.
11

12 THE COURT: I understand that you are not speak-
13 ing of Mr. Phillips personally.

14 All right, gentlemen. I have the Springer
15 suppression motion scheduled to continue tomorrow. If you
16 would like to be here, you can, but as a practical matter,
17 I am facing some very practical and difficult decisions.
18 This one, the decision on this motion, is one of them.

19 All defense counsel joined in the motion. It
20 is my understanding that all defense counsel join in the
21 motion to sequester the jury. I have not issued an order on
22 that motion yet, but as a practical matter, I have decided--
23 and I have made arrangements for this -- that on Monday
24 morning next, when the Court is bringing in three hundred
25 new veniremen, that I will have the best chance to get
18 people -- that is what we will have -- 18 people for the

1 jury.

2
3 In other words, Monday morning this particular
4 part of this Court will get first crack at all 300. Under
5 the circumstances, the selection of the jury will start
6 Monday morning at 10:00 o'clock. There will be absolutely
7 no excuse for anyone being late. In order for me to select
8 the jury, I basically will be delaying every other judge in
9 this building, and I want to keep that delay to an absolute
10 minimum. Do you understand? You are required to be back
11 here Monday at 10:00 o'clock.

12 If you would like to be in on the Springer
13 motion, that goes on tomorrow at 10:00 o'clock.

14 Does everybody understand?

15 This also, by the way, gives me an opportunity
16 to completely digest the arguments which were made today.
17 I can truthfully say I have absolutely, as of this moment,
18 made no decisions and no findings as far as this motion is
19 concerned. I think it only fair to both sides for me to
20 take some time, read the cases, and whatever I do, state my
21 reasons why I do it.

22 Mr. Phillips, do you have something else?

23 MR. PHILLIPS: Just one thing, your Honor.

24 Yesterday there were three defendants not present
25 for one of whom you issued a bench warrant, Mary Jane

Salvani; one of whom I understand appeared at 2:00 o'clock yesterday afternoon, Mr. Butch Pugliese; one of whom has not appeared yet. I do not see his counsel. I ask that a bench warrant be issued for Dominick Lessa. Mr. Lessa's attorney told my secretary that he would be in court today to give me some information -- it was that general -- and I have not heard from him since.

THE COURT: All right. A bench warrant will issue for the defendant Lessa.

Gentlemen, I expect to see you back here at 10:00 o'clock Monday morning.

MR. PANZER: Your Honor, I will just add: when will we get some decision on these important motions, so we will be in a position to know what is going to happen Monday morning?

THE COURT: Yes. I intend to file an opinion in this motion by Friday, and you will have it by Friday afternoon. It puts a tremendous burden on me, but it seems like you fellows are doing quite a bit of that.

MR. RICHMAN: Pardon me, your Honor. If your Honor decides to allow this money in in this particular case, I have a particular problem with my client viz-a-viz this case, and I would renew my application made before your Honor, I recall, on the 10th.

1
2 THE COURT: I understand your problem,
3 Mr. Richman.

4 MR. PHILLIPS: Your Honor, the government has
5 some voir dire questions which we would hand up and give
6 copies to counsel. I don't think I have enough copies at
7 this time to give copies to all counsel, but we will by
8 this afternoon.

9 THE COURT: Speaking of the voir dire requests,
10 there was an indication that the defense would have some
11 specific questions that they would like to be asked. I
12 would appreciate it if you would get those in to me by the
13 very latest Friday at noontime. That gives you a couple of
14 extra days to make sure that you get them in.

15 All right. I recognize, as I was just reminded,
16 that there also are a couple of other motions still open.
17 I will do my very best to dispose of them all by Friday,
18 so that on Monday morning you won't be surprised.

19 All right. Any other questions?

20 All right.

21 (Adjourned to January 16, 1974, at 10:00 a.m.)
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23
24
25

